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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

THE WEBSTER MOTOR CAR COMPANY,
Petitioner,
v.
PACKARD MOTOR CAR COMPANY, *et al.*,
Respondents.
No. 213

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OF THIS COURT'S ORDER OF OCTOBER 14, 1957, DENYING CERTIORARI

This brief is filed by respondents, Packard Motor Car Company (hereinafter referred to as "Packard"), Marshall Beck and C. M. Porter, in opposition to the motion of The Webster Motor Car Company (hereinafter referred to as "Webster") for leave to file, out of time, a second petition for rehearing of this Court's order denying certiorari.

Webster filed its petition for a writ of certiorari during the October Term, 1956 (Docket No. 1113). The petition was denied by order dated October 14, 1957 (355 U. S. 822). A petition for rehearing of the petition for a writ of certiorari was filed by Webster during the October Term, 1957 (Docket No. 213). The petition for rehearing was denied by order dated December 9, 1957 (355 U. S. 900).

The bases for respondents' opposition to Webster's petition for a writ of certiorari were set forth in respondents' brief in opposition to that petition.

Webster's present motion is asserted (p. 2) to be "justified" by the pendency before this Court of three cases: *Guerain, Inc.* v. *United States*, Docket No. 692; Parfums *Corday, Inc.* v. *United States*, Docket No. 751; and *Lanvin Parfums, Inc.* v. *United States*, Docket No. 752 (hereinafter collectively referred to as the "perfume cases"). Webster asserts (p. 2) that "the soundness of the decision of petitioner's case by the United States Court of Appeals for the District of Columbia Circuit is directly in issue" in those cases.

Webster has filed a motion for leave to file a brief *amicus curiae* in the perfume cases, pointing out (p. 2) that all parties to those cases refused to consent to the filing of that brief. In that brief, Webster states (p. 1) that the purpose of the brief was as follows:

> "The purpose of this brief is to prove that Judge Edelstein, while correct in refusing to follow the *Webster* case, rejected it for wrong reasons, which if endorsed by this Court will seriously impair the enforcement of the Sherman Act."

and concludes its discussion of Judge Edelstein's opinion in the perfume cases as follows (p. 6):

> "It seems clear that if Judge Edelstein had understood the *Webster* case, he would have realized that it is in conflict with what is quoted above, and would have been forced to a flat disagreement with, and would have rejected, appellant's reliance on *Webster*.
>
> "It is only fair to suggest that the 4th Circuit's per curiam affirmance of the *Schwing* case (*Schwing Motor Car Co.* v. *Hudson Sales Co.*, 138 F. Supp. 899; 239 F. 2d 176; cert. den. 355 U. S. 823) and this Court's denial of certiorari in *Webster* may have diverted Judge Edelstein's attention from a careful reading of those cases."

ARGUMENT

On its present motion, Webster fails to present, as required by Rule 58 of the Rules of this Court, any intervening circumstances of substantial or controlling effect or any substantial ground not previously presented which would warrant receipt, out of time, of its second petition for rehearing. All of the arguments on the merits in Webster's new petition for rehearing were made in Webster's petition for a writ of certiorari and its first petition for rehearing. Indeed, even the prospect that this Court would hear the perfume cases was present when Webster's petition for certiorari was before this Court, since the decision of the District Court was referred to in Webster's reply to respondents' brief in opposition to the petition for certiorari (pp. 5, 8) and it was clear then that the perfume cases would be likely to come before this Court on direct appeal.

For the following additional reasons, the pendency of the perfume cases before this Court affords no support for Webster's motion:

1. The decision of the Court of Appeals in the present case rested on the alternative ground that, as a matter of general common law, the alleged acts complained of by Webster "inflicted no damage" because Webster rejected the usual one-year renewal of its dealership agreement. The Court of Appeals summarized the facts in this connection as follows:

> "* * * After Webster protested and threatened suit, Packard offered Webster the usual one-year renewal but refused to promise more. Packard told Zell, in effect, that this would be Webster's last renewal. Webster declined Packard's offer, quit the business, and brought this suit."

The alternative ground of the decision was stated by the Court of Appeals as follows:

> "3. Though Packard had formerly expressed an intention, not to renew its contract with Webster, Packard offered and Webster refused the usual renewal. That Packard had agreed with Zell not to renew Webster's contract again when the proffered renewal expired is immaterial, not only because the agreement was legal but also because it inflicted no damage."

This alternative ground, involving a simple non-federal question as to the legal effect of Webster's refusal of the usual renewal of its dealership agreement, is in no way involved in perfume cases.

2. In his determination of the relevant market issue in the perfume cases, Judge Edelstein relied specifically on the facts of record in those cases (155 F. Supp., at pp. 84-86, 88-89, 92, 95). On the other hand, the Court of Appeals in the present case determined on the record before it that there was no evidence to support a jury decision that the relevant market was a Packard market. The overwhelming, undisputed evidence in the record compelled the conclusion that the relevant market was the automobile market (R. 475, 493-4, 498-9, 668-9, 671, 672-3, 704-5, 193, 207, 361, 376-7, 452; Def. Ex. 26, R. 1131). Thus, even if this Court should affirm the decision of the District Court in the perfume cases on the ground that the relevant markets in those cases were markets for the respective trademarked articles involved in those cases, there would be no occasion for a reversal of the decision of the Court of Appeals in the present case.

CONCLUSION

It is respectfully submitted that Webster's motion should be denied.

Respectfully submitted.

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